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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

9016

FILE: B-193774 DATE: January 31, 1979

MATTER OF: Eastern Brokers Inc. and Jan Pro Corporation
DLG-00794 DLG-00795

DIGEST:

[Allegation that Bid Price Was Unreasonably Low]

1. Where protester alleges that low bidder's bid price is unreasonably low, mere fact that below-cost bid is submitted does not constitute legal basis for precluding award.
2. Question of whether bidder submitting below-cost bid can perform contract in conformance with specifications is matter of bidder responsibility and not for consideration by our Office except in circumstances not present here.
3. Whether contract will be performed in compliance with the contract requirements is matter of contract administration and not for consideration under GAO's Bid Protest Procedures.

AGC 60001

Eastern Brokers Inc. and Jan Pro Corporation protest the award of contract No. N62472-79-C-3427 to R&B Refuse Company (R&B) by the Department of the Navy. The contract is for custodial services at the Naval Underwater Systems Center, New London Laboratory, New London, Connecticut, and Dodge Pond Field Station, East Lyme, Connecticut.

Eastern Brokers Inc. and Jan Pro contend that R&B's bid price is unreasonably low and, therefore, R&B cannot and will not perform the contract properly. They further contend that the contracting officer has shown favoritism toward a nonminority contractor because R&B is presently performing refuse contracts for the same procurement and has no knowledge of custodial services.

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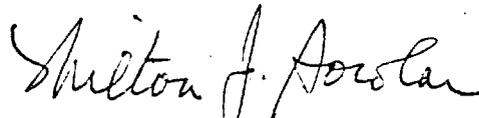
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With regard to the allegation that the low bidder's price is unreasonably low, we have held in prior decisions that the mere fact that a bidder may have submitted a below-cost bid does not constitute a legal basis for precluding a contract award. Kleen-Rite Corporation, B-190411, November 8, 1977, 77-2 CPD 354.

To reject a bid as being unreasonably low would require a determination that the bidder is not responsible. However, with regard to an affirmative determination of responsibility of a bidder submitting a below-cost bid, this Office no longer reviews protests against affirmative determinations of responsibility, unless either fraud is shown on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See, Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. In the present case, there is no allegation that the affirmative responsibility determination resulted from either fraud or that definitive criteria have not been applied.

↳ Regarding the protester's contention that the contract will not be performed properly, it should be pointed out that whether the contractor is complying with the contract requirements is a matter of contract administration not for consideration under our Bid Protest Procedures, 4 C.F.R. part 20 (1978). See, Robert Burger Associates, Inc., B-188450, June 1, 1977, 77-1 CPD 378. It is the Navy's responsibility to take appropriate action if the contract is not properly performed.

Accordingly, the protest is dismissed.



Milton J. Socolar
General Counsel